IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 18878 of 2004

Between:

Md.Ankoos, S/o.Ali Mohammad,
R/o.3-4-152, Rayapura,
Hanumakonda, Warangal Dist.

... PETITIONER

AND

1 Govt. of A.P., rep.by Prl.Secretary, Higher Education (EC) Dept., Secretariat

Buildings, Hyderabad.
2 All India Council of Technical Education, rep.by it's Prl.Secretary, I.P.Estate,

New Delhi.
3 Southern Regional office of council for Technical Education, Sastri Bhavan,

Mungambakkam, Chennai.
4 Dist. Collector, Warangal Dist. Warangal.
5 KNR Education Society, Mallampalli Village,rep.by its Sectrary, Mulugu

Mandal, Warangal Dist.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or order or direction more particularly in the nature of writ of Mandamus declaring the action of the respondents 1 to 4 in reviving the NOC and approval by

R2 in favour of R5 as unconstitutional and consequently set aside the orders of R1 dated:
8-9-04 and consequential orders of R2 dated: 15-09-04.

Counsel for the Petitioner: MR.K.S.MURTHY

Counsel for the Respondents 1 and 4: GP FOR HIGHER EDUCATION

Counsel for the Respondents 2 and 3: Mr. Sudhesh Anand

The Court at the admission stage made the following:

ORDER:

Heard the learned counsel for the petitioner and also the learned Government Pleader appearing on behalf of the respondents.

Petitioner claims to be the owner of land in S.No.61/2 of Mallampalli village, Mulugu Mandal that was purchased by the petitioner's father through an agreement of sale in the year 1984 and who is in possession of the same. On coming to know that 5th respondent is occupying the petitioner's land in an extent of 10 acres, he filed O.S.No.962 of 2001 against the 5th respondent, before the II Additional Senior Civil Judge, Warangal seeking permanent injunction and obtained temporary injunction in I.A.No.727 of 2001 on 28-07-2001. On appeal filed by the 5th respondent, the III Additional District Judge made the injunction absolute for 9 acres of land. According to the petitioner, out of the 19 acres of land, Ac.1-39 guntas was acquired for Sriram Sagar Project canal and out of the balance Ac.17-00 guntas, petitioner's share comes Ac.10-00 guntas and rest of the land will fall to the share of his cousin brother, which was elaborately discussed in the C.M.A., while making the injunction absolute. While so, 5th respondent is trying crystallize his encroachment upon the petitioner's land and obtained the approval from the 2nd respondent for establishing the college, in which students were also allotted to the 5th respondent institution. Alleging that the 5th respondent, by playing fraud, made a representation to the 1st

respondent, stating that Ac.10.00 guntas of land is free from litigation in the light of the order passed by the III Additional District Judge. Based on the said representation, he obtained 'No Objection Certificate' on 08-09-2004 and also obtained approval from the AICTE on 15-09-2004. In view of the same, the present writ petition has been filed to declare the action of Respondents 1 to 4 in reviving the 'NOC' and granting approval by 2nd respondent in favour of the 5th respondent as unconstitutional and to set aside the 'NOC' issued by the 1st respondent, dated 08-09-2004 and consequential approval dated 15-09-2004.

3. Having heard the counsel on either side, I am of the view that the writ petition cannot be entertained as held by the Apex Court in ***Mohan Pandey Vs. Smt. Usha Rani Rajgaria*** , which reads as under:

> "It has repeatedly been held by this Court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged".

4. Having regard to the fact that the matter is pending adjudication before the Civil Court, the first or second respondent cannot adjudicate the rival claims of the petitioner as well as the fifth respondent and their right to hold the immovable property, if any. In view of the same, petitioner is at liberty to approach the Civil Court for appropriate orders against the fifth respondent, with regard to the suit schedule property. It is needless to observe that the Civil Court has to decide the *lis* between the parties uninfluenced by the 'NOC' and approval, if any, obtained by the 5th respondent.

The writ petition is accordingly dismissed. No costs.

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A. **GOPAL REDDY, J**

October 13, 2004

MRR

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To:

1 The Principal Secretary Govt. of A.P., Higher Education (EC) Dept.,

Secretariat Buildings, Hyderabad.
2 The Principal Secretary, All India Council of Technical Education, I.P.Estate,

New Delhi.
3 Southern Regional office of council for Technical Education, Sastri Bhavan,

Mungambakkam, Chennai.
4 Dist. Collector, Warangal Dist. Warangal.
5 Two C.C. s to the G.P. for Higher Education, High Court Buildings,

Hyderabad (OUT)

6 Two C.D. Copies.